

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 135

Pub. Rec./Insured Dependents/Agency Group Plan

SPONSOR(S): McKeel

TIED BILLS:

IDEN./SIM. BILLS: SB 270

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Reilly	Cooper
2)	Governmental Affairs Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)	Policy Council			
5)				

SUMMARY ANALYSIS

The public's right of access to government records is established by the Constitution of the State of Florida. The Legislature, however, is authorized to create exemptions to preclude the disclosure of specified records when the exemption is found to be a public necessity and is not broader than necessary to meet that public necessity.

House Bill 135 creates an exemption to Florida's Public Records Act to preclude the disclosure of personal identifying information of minor dependents of agency employees when such minor dependents are insured under an agency group insurance plan. The bill specifies that personal identifying information of agency employees remains subject to public disclosure.

This bill provides for future review and repeal of the exemption and a statement of public necessity.

The exemption is effective July 1, 2009, and applies retroactively to such personal identifying information held by an agency before this date.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on Florida's Public Records Laws

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.¹ More comprehensive legislation was adopted in 1967 with the enactment of ch. 119, F.S.

In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution provides that:

Every person³ has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution...

The Public Records Act⁴ specifies conditions under which access must be provided to agency⁵ records. Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

¹ Section 1390, 1391 F.S. (Rev. 1892).

² Article I, s. 24 of the State Constitution.

³ Section 1.01(3) F.S., defines "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

⁴ Chapter 119, F.S.

⁵ The word "agency" is defined in s. 119.011(2), to mean "...any state, county, district authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law, including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

...all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁶

The Florida Supreme Court has interpreted this definition to encompass all materials prepared in connection with official agency business which are intended to perpetuate, communicate, or formalize knowledge.⁷ Such materials, regardless of whether they are in final form, are open for public inspection unless specifically exempted.⁸

Only the Legislature is authorized to create exemptions.⁹ An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.¹⁰

The Open Government Sunset Review Act¹¹ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of exemptions. By June 1, the Division of Statutory Revision of the Office of Legislative Services must certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Under the act, an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are if the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize their safety; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹²

Personal Identifying Information of Enrollees in an Agency's Group Insurance Plan

In a case decided in October 2008,¹³ the School Board of Polk County was ordered to disclose, in response to a public records request, public records regarding the school district's health insurance policy, and the name, addresses, gender, age, title, and telephone number of both agency employees and dependents covered by the policy. The circuit court found the Health Insurance Portability and

⁶ Section 119.011(12), F.S.

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁸ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁹ Article I, s. 24(c) of the State Constitution.

¹⁰ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999).

¹¹ Section 119.15, F.S.

¹² Section 119.15(6)(b), F.S.

¹³ *Chandler v. School Board of Polk County*, Case No. 2008CA-004389.

Accountability Act of 1996 (HIPAA) inapplicable to the case at hand and that the request sought only non-exempt information under Florida law.

Subsequently, in response to a letter from State Senator Dockery, the Florida Attorney General's Office issued an informal advisory legal opinion¹⁴ as to whether ss. 112.08(7)¹⁵ and 119.071(4)(b), F.S.,¹⁶ preclude the release of information that identifies school district employees, their dependents, and their health insurance plans. The attorney general concluded that while information relating to an insurance program participant's medical condition is clearly protected from disclosure, it is unclear whether the protection from disclosure extends to an enrollee's personal identifying information.

Effect of the Bill

House Bill 135 creates an exemption to Florida's Public Records Act to preclude the disclosure of personal identifying information of minor dependents of current or former agency employees when such minor dependents are insured under an agency group insurance plan.

Existing statutory exemptions concerning agency personnel information do not preclude the disclosure of personal identifying information. While these exemptions, in part, prohibit disclosure of medical information pertaining to agency officers and employees when disclosure would identify the officer or employee,¹⁷ such exemption does not extend to preclude disclosure of personal identifying information.

The bill sets forth the Legislature's finding that the exemption is a public necessity, as it protects from disclosure sensitive, personal information that could be used to identify minors for sexual or other criminal offenses. Personal identifying information of agency employees and information that does not specifically identify minor dependents expressly remains available to the public.

In accordance with the Open Government Sunset Review Act, the exemption will sunset on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071, F.S., to exempt from disclosure under the Public Records Act personal identifying information of minor dependents of agency employees who are insured by an agency group insurance plan.

Section 2. Provides a statement of public necessity for the exemption.

Section 3. Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

¹⁴ Informal opinion of November 10, 2008.

¹⁵ Exempts from disclosure all medical records and medical claims records in the custody of a unit of county or municipal government relating to county or municipal employees, former county or municipal employees, or eligible dependents of such employees enrolled in a county or municipal group insurance plan or self-insurance plan.

¹⁶ Exempts from disclosure medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee.

¹⁷ Section 119.071(b), F.S.

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of each house for passage of a newly created public records or public meetings exemption.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill protects from disclosure personal identifying information of "minor dependents" of agency employees, when such dependents are ensured by an agency group insurance plan, but would not protect the information of dependents who are not minors.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES